Supreme Court, U.S.
FILED
NOV 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-593

In the
Supreme Court of the United States

OCTOBER TERM, 1989

LIBERTY MUTUAL INSURANCE CO. AND
LIBERTY MUTUAL FIRE INSURANCE CO.,
PETITIONERS,

v.

COMMISSIONER OF REVENUE,
COMMONWEALTH OF MASSACHUSETTS.
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME JUDICIAL COURT
OF MASSACHUSETTS

Respondent's Brief in Opposition

JAMES M. SHANNON
Attorney General
THOMAS A. BARNICO*
Assistant Attorney General
One Ashburton Place
Boston, Massachusetts 02108
(617) 727-2200, ext. 2086

**Counsel of Record*

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

1. Whether a Massachusetts tax on domestic insurance companies that is based in part on investment income reported for regulatory purposes is a "franchise tax" which may include in its measure interest on federal bonds.

2. Whether the Contracts Clause precludes a state from including interest on state bonds in the measure of a franchise tax on domestic insurance companies.

TABLE OF AUTHORITIES

PAGE

OPINIONS BELOW 2

JURISDICTION 2

STATUTES INVOLVED 3

STATEMENT OF THE CASE 5

REASONS FOR DENYING THE PETITION 9

I. THE DECISION BELOW CORRECTLY APPLIES THE DECISIONS OF THIS COURT UPHOLDING FRANCHISE TAXES. 10

II. LIBERTY'S CLAIM OF "CONFLICT" AND "CONFUSION" IN THE LOWER COURTS IS OVERSTATED. 16

A. The Decision Below Is Consistent With The Decisions of Other State Courts. 18

B. The Few Cases Striking Down State Taxes Under § 742 are Distinguishable because of Material Differences in the State Taxes At Issue. 22

PAGE

III. THE CONTRACT CLAUSE QUESTION DOES NOT MERIT REVIEW BY THE COURT. 26

CONCLUSION 32

PAGE

Cases

American Bank & Trust Co. v. Dallas County, 463 U.S. 855 (1983) 19, 24

Atlantic Coast Line R.R. v. Phillips, 332 U.S. 168 (1947) 29

Centerre Bank of Crane v. Director of Revenue, 744 S.W.2d 754 (Mo. 1988) 20

C.C. Collings & Co., Inc. v. Commonwealth, 488 A.2d 1187 (Commonwealth Ct. Pa. 1984), aff'd per curiam sub. nom., Commonwealth Securities and Investments, Inc. v. Commonwealth, 514 A.2d 1373 (Pa. 1986) 24

Complete Auto Transit v. Brady, 430 U.S. 274 (1977) 19

Dale National Bank v. Commissioner, 465 A.2d 965 (Pa. 1983) 24

Educational Film Corp. v. Ward, 282 U.S. 379 (1931) 9n, 14, 15, 20

Federal Products Corp. v. Norberg, 429 A.2d 447 (R.I. 1981) 22

PAGE

First Federal Savings & Loan Ass'n of Philadelphia v. Commonwealth, 528 A.2d 942 (Pa. 1987) 24

Flint v. Stone Tracy Co., 220 U.S. 107 (1911) 9n

Home Insurance Co. v. New York, 134 U.S. 594 (1890) 9n

State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95 (1938) 29

In Re Woods, 143 U.S. 202 (1892) 9

Layne F. Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923) 17

Michigan v. Long, 463 U.S. 1032 (1983) 29

Northwestern Mutual Ins. Co. v. Wisconsin, 275 U.S. 136 (1929) 11, 12, 14

Pacific Co. v. Johnson, 285 U.S. 480 (1932) 9n

Provident Institution for Savings v. Massachusetts, 6 Wall. 611 (1868) 9n

Raymond Bag Co. v. Bowers, 126 N.E.2d 321 (Ohio 1955), app. dism., 350 U.S. 1003 (1956) 18

PAGE

Rice v. Sioux City Cemetary,
349 U.S. 70 (1955) 17

Savings League of Wisconsin v.
Wisconsin Dept. of Revenue,
416 N.W.2d 650 (1987), app. dism.,
109 S.Ct. 37 (1988) 20

Society for Savings v. Coite,
6 Wall. 594 (1868) 9n

Tradesmens National Bank v.
Oklahoma Tax Commission,
309 U.S. 560 (1940) 9n

Werner Machine Co. v. Director,
Division of Taxation,
350 U.S. 402 (1956) 9n, 11, 12, 20

Federal Constitution

Article I, § 10 26

	PAGE
Federal Statutes	
28 U.S.C. § 1257	3, 30
31 U.S.C. § 742	passim
Massachusetts Statutes	
Mass. St. 1862, c. 224, §§ 1 and 2	6
Mass. St. 1880, c. 227, § 1	6
Mass. St. 1943, c. 531	6
Mass. St. 1971, c. 555, § 27	7
Mass Gen. Laws c. 63, § 22A	passim
Mass. Gen. Laws c. 175, § 25	4, 7, 13
Miscellaneous	
U.S. Supreme Court Rule 17	9
U.S. Supreme Court Rule 22.1	1, 5

No. 89-593

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

LIBERTY MUTUAL INSURANCE CO. and
LIBERTY MUTUAL FIRE INSURANCE CO.,

Petitioners,

v.

COMMISSIONER OF REVENUE,
COMMONWEALTH OF MASSACHUSETTS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

Pursuant to United States Supreme Court Rule 22.1, respondent Commissioner of Revenue, Commonwealth of Massachusetts (the "Commonwealth"), submits this brief

in opposition to the petition for a writ of certiorari filed by Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Company ("Liberty") in this case.

OPINIONS BELOW

The two opinions of the Supreme Judicial Court identified at page 1 of the petition are also reported at 541 N.E.2d 566 (1989), and 428 N.E.2d 297 (1981), respectively.

JURISDICTION

The judgment of the Massachusetts Supreme Judicial Court was entered on July 11, 1989. See Pet. App. D. The petition was filed on October 9, 1989, and received by the Commonwealth on

October 11, 1989. The petitioner has invoked the Court's jurisdiction under 28 U.S.C. § 1257. Pet. 2.

STATUTES INVOLVED

An accurate statement of the federal statutes and constitutional provisions involved in this case appears at pages 2-3 of the petition. As to the relevant Massachusetts statutes, the Commonwealth sets forth the full text of Mass. Gen. Laws c. 63, § 22A, as follows:

> Every domestic insurance company coming within the scope of the definition of a domestic company in section one hundred and seventy-five shall annually pay, as part of its excise imposed under this chapter, an amount equal to one per cent of its total gross investment income earned during the preceding calendar year, as reported in its annual statement for said year filed with the commissioner of insurance and as shown in Exhibit 3 of said statement for a life insurance company or in

item 10, Column 8, Part I, of the Underwriting and Investment Exhibit for any other domestic insurance company.

Mass. Gen. Laws c. 175, § 25, provides in part:

> Every company shall annually, on or before March first or sixty days from such date authorized by the commissioner, file with the commissioner a statement showing its financial condition on December thirty-first of the previous year or such other date as the commissioner may authorize for such company, and its business of that year. The commissioner may, for cause shown, extend the filing date of the annual statement, or of schedules or exhibits which are a part of such statement or which are required by the commissioner, for not more than sixty days beyond March first or the date authorized by the Commissioner in said year.
>
> Such annual statement shall be made on a blank furnished by the commissioner under section fifteen or on an alternate form acceptable to him. Such alternate form may be the latest applicable form of annual statement approved by the National Association of Insurance Commis-

sioners appropriate to the several kinds of companies, with any additional inquiries the commissioner may require for the purpose of eliciting a complete and accurate exhibit of the condition and transactions of the companies. Such statement shall be subscribed and sworn to by the president and secretary or, in their absence, by two of its principal officers. The commissioner may at other times require any such statements as he may deem necessary.

* * *

STATEMENT OF THE CASE

Pursuant to Supreme Court Rule 22.1, the Commonwealth supplements the statement of the case made by Liberty at pages 3-5 of the petition, as follows. First, the Commonwealth incorporates the statement of facts and prior proceedings set forth in the opinion of the Mas-

sachusetts Supreme Judicial Court, Pet. App. A3-A6. Second, the Commonwealth adds the following legislative history and facts concerning the operation of the tax at issue.

The Commonwealth has imposed an excise on insurance companies doing busi- ness in the Commonwealth for over a cen- tury. See Mass. St. 1862, c. 224, §§ 1 and 2 (accident insurers); Mass. St. 1880, c. 227, § 1 (life insurers). For much of that time, the Massachusetts in- surance excise was based on total premi- ums. See Mass. St. 1943, c. 531 (chang- ing measure of the excise on life in- surers from net value of policies to total premiums).

In 1971, the Massachusetts Legisla- ture amended the existing measure

of the excise to include "gross investment income" earned during the preceding year, as reported by each domestic insurer to the Massachusetts Commissioner of Insurance in the annual statement of condition filed by each domestic company with him. See Mass. St. 1971, c. 555, § 27.

The "annual statement of condition" identified in § 22A is filed by each Massachusetts insurance company pursuant to Mass. Gen. Laws c. 175, § 25. The annual statement shows the company's "financial condition on December [31] of the previous year . . . and the company's business of that year." Id. The purpose of the form is to "elicit [ ] a complete and accurate exhibit of the condition and transactions of the companies." Id.

As the court below noted, the fact that the tax is based upon each company's annual statement results in a "tax measure which includes items that are not 'income' to the companies in the traditional sense, such as imputed home office rent, amortization of federal investment tax credits, and earnings on assets held in connection with employee and agents' pension plans; and excludes items which are income in the traditional sense, such as capital gains." Pet. App. A6.

Finally, as the Court below noted, the Massachusetts excise tax includes in its measure interest on bonds issued by both the United States and the Massachusetts governments. Id. at A8.

REASONS FOR DENYING THE PETITION

Under Supreme Court Rule 17, "[a] review on writ of certiorari is not a matter of right but of judicial discretion, and will be granted only when there are special and important reasons therefor." The purpose of certiorari jurisdiction is to permit the Court to select cases "of such gravity and general importance" as to warrant plenary review. In Re Woods, 143 U.S. 202, 206 (1892).

For the reasons set forth below, Liberty's petition does not satisfy the traditional criteria which guide the Court's discretionary review. Accordingly, the petition should be denied.

I. THE DECISION BELOW CORRECTLY APPLIES THE DECISIONS OF THIS COURT UPHOLDING FRANCHISE TAXES.

Liberty asserts a conflict between the decision below and decisions of this Court. This claim has no merit.

This Court has repeatedly held that the States can lawfully consider tax-exempt federal income in calculating a franchise tax.[1/] The Court has "consistently upheld franchise taxes measured by a yardstick which includes tax-exempt

---

1/ See, e.g., Society for Savings v. Coite, 6 Wall. 594 (1868); Provident Institution for Savings v. Massachusetts, 6 Wall. 611 (1868); Home Insurance Co. v. New York, 134 U.S. 594 (1890); Flint v. Stone Tracy Co., 220 U.S. 107 (1911); Educational Films Corp. v. Ward, 282 U.S. 379 (1931); Pacific Co. v. Johnson, 285 U.S. 480 (1932); Tradesmens National Bank v. Oklahoma Tax Commission, 309 U.S. 560 (1940); Werner Machine Co. v. Director, Division of Taxation, 350 U.S. 492 (1956)(per curiam).

income or property, even though a part of the economic impact of the tax may be said to bear indirectly upon such income or property." Werner Mach. Co. v. Director of Div. of Taxation, 350 U.S. 492, 494 (1956)(per curiam).

The court below cited Werner and held that § 22A imposed a permissible franchise tax. See Pet. App. A6-A9; A35-A39. Contrary to Liberty's claim, the court below did not "pronounce[ ] that Northwestern Mutual Ins. Co. v. Wisconsin, 275 U.S. 136 (1927), has been overruled." Pet. 12, citing Pet. App. A6-A7. Rather, the court below reasoned that Northwestern Mutual must be read in light of subsequent cases that have upheld franchise taxes measured in part

by a "yardstick which includes tax-exempt income or property[.]" Werner Mach. Co., 350 U.S. at 535.

The court's reasoning echoed that expressed in its 1981 decision upholding § 22A. See Pet App. A26-A42. In its 1981 decision, the court addressed Northwestern and stated that "the fundamental issue" was "not whether the measuring base relies on gross income or net income," Pet. App. A36, but rather whether the tax evidenced those incidents and characteristics which distinguish a franchise from a property tax. Id.

In its 1989 decision, the court also correctly distinguished Northwestern on the ground that while Northwestern concerned a tax on "gross income," § 22A in operation did not, because it imposed

an excise measured by "gross investment income" as reported to the Commissioner of Insurance in the annual statement. See Pet. App. A6; Mass. Gen. Laws c. 63, § 22A, and c. 175, § 25. The court below stated that it had "carefully looked behind the labels of the State statute to determine whether the excise tax of [§ 22A] was a nondiscriminatory franchise or other nonproperty tax which is permitted under Federal law, or whether it was a property tax forbidden by Federal law." Id. The court noted, correctly, that "the tax measure of § 22A includes items that are not 'income' to the companies in the traditional sense, such as imputed home office rent, amortization of Federal investment tax credits, and earnings on assets held in connection with employee and agents'

pension plans; and excludes items which are income in the traditional sense, such as capital gains." Id. The court concluded that "the fact that the measure of the tax mentions 'gross investment income' as reported in the annual statement does not divest the tax of its excise character." Id. These excerpts from the decision below show that the court acknowledged and distinguished Northwestern; it did not suggest that the case has been "overruled."

Finally, the decision below is particularly supported by Educational Films Corporation v. Ward, 282 U.S. 379 (1931). Ward upheld the inclusion of interest on federal bonds in the measure

of a New York corporate franchise tax. The Court "look[ed] to the operation of the statute," and found that "it is plain that it can have no application independent of the corporation's enjoyment of the privilege of exercising its franchise." Id. at 388. Like the New York tax, the Massachusetts tax under § 22A "can be levied only when the corporation both seeks or exercises the privilege of doing business in one year and has been in receipt" of the specified investment income during the previous fiscal year. Id. For this reason, the Massachusetts tax cannot be said to be a tax "exclusively on income apart from the franchise." Ward, 282 U.S. at 388. Since the decision below is consistent with Educational Films Corporation v. Ward,

as well as the other decisions of this Court cited above, there is no need for plenary review.

II. LIBERTY'S CLAIM OF "CONFLICT" AND "CONFUSION" IN THE LOWER COURTS IS OVERSTATED.

The first question presented by Liberty involves the meaning of a statute, the former 31 U.S.C. § 742, not the Constitution. Questions of statutory interpretation are usually left to the lower courts to sharpen and resolve. In other cases, this Court leaves resolution of statutory questions to Congress. In any event, this Court does not normally grant review of statutory questions in the absence of a clear conflict in the

lower courts or other compelling reasons. Moreover, a conflict in the lower courts will not justify review unless it is "real and embarassing." Rice v. Sioux City Cemetary, 349 U.S. 70, 79 (1955), quoting Layne F. Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387, 393 (1923) (conflicts in federal courts).

The "conflict" asserted by Liberty is neither real nor embarassing. In fact, (1) the clear majority of the lower courts have upheld taxes similar to the Massachusetts tax on domestic insurance companies, and (2) the allegedly "conflicting" decisions of other state courts are distinguishable because of material differences in the state taxes at issue.

A. The Decision Below Is Consistent With The Decisions of Other State Courts.

Liberty argues that certiorari is necessary because "conflict" and "confusion" exist in the decisions of the highest courts of several states. See Pet. 7. No such conflict exists in this case.

The overwhelming majority of state courts have consistently applied § 742 to uphold state taxes similar to § 22A on the ground that they are "franchise or other non-property taxes" exempt from the prohibition of § 742. See Pet. 16-18 and Pet. App. A7 (cases collected); see also Raymond Bag Co. v. Bowers, 126 N.E.2d 321 (Ohio 1955), app. dism., 350 U.S. 1003 (1956). This Court

has consistently denied review or dismissed appeals in these cases.

Liberty disparages these cases, which represent the great weight of precedential lower court decisions in the area, on the ground that they "have ignored the teaching of [Complete Auto Transit v. Brady, 430 U.S. 274 (1977), and American Bank & Trust Co. v. Dallas County, 463 U.S. 855 (1983)] and have used outmoded tax labelling to preserve (but never to strike down) challenged state taxes." Pet. 16. This charge, even if true, would not show conflict among the lower courts. At most, the charge concerns consistency between the decisions of state courts and decisions of this Court. For the reasons in Section I, however, this charge has no

merit because the decisions of this Court support both the decision of the Massachusetts Supreme Judicial Court and the consistent decisions of a clear majority of state courts that have considered § 742.

Liberty's claim of conflict among the lower courts also relies on mischaracterizations of the state decisions. Those decisions (collected at Pet. 16-17) do not rely on "outmoded tax labelling." Pet. 16. Rather, they apply the standards set by this Court for determining whether a tax is a "franchise" that is exempted from the statutory prohibition against taxation of federal obligations. See, e.g., Centerre Bank of Crane v. Director of Revenue, 744 S.W.2d 754 (Mo. 1988), and

Savings League of Wisconsin, Ltd. v. Wisconsin Dept. of Revenue, 416 N.W.2d 650 (1987), app. dism., 109 S.Ct. 37 (1988)(both applying Werner Machine Co. v. Director, Division of Taxation, 350 U.S. 402 (1956), and Educational Film Corp. v. Ward, 282 U.S. 379 (1931)). Thus, the Massachusetts decision is only the latest in a long line of cases in which a state court has properly upheld a franchise tax and this Court has denied review. For these reasons, the decision below does not create a conflict of decision or rationale which warrants plenary review.

B. The Few Cases Striking Down State Taxes Under § 742 are Distinguishable because of Material Differences in the State Taxes At Issue.

Liberty attempts to support its claim of conflict by citing cases in which state courts have invoked § 742 to strike down state taxes. See Pet. 17-18. While six decisions are cited, only two are the controlling precedents of a state. The first of these two, a Rhode Island case, does not demonstrate a conflict worthy of review by this Court. In 1981, the Rhode Island Supreme Court struck down the application of the Rhode Island Business Corporation Tax to sale proceeds and interest from federal obligations. Federal Products Corp. v. Norberg, 429 A.2d 447, 449-50 (R.I.

1981). The court noted, however, that the Rhode Island tax was not levied under the Rhode Island "Corporate Franchise Tax." Id. Further, the Rhode Island tax bore none of the indicia of a franchise tax identified by the Massachusetts court below, such as its limitation to years in which the franchise is exercised, and its exclusion of certain traditional forms of income. See Pet. App. A6. For these reasons, the Rhode Island case did not squarely present, let alone decide, the issue Liberty presents here.

The Pennsylvania cases cited by Liberty similarly do not support the claim of national "conflict" or "confusion" in the application of § 742.

In fact, two of the three cited Pennsylvania cases solely concern state law issues, and do not construe § 742 at all. See First Federal Savings & Loan Ass'n of Philadelphia v. Commonwealth, 528 A.2d 942 (Pa. 1987); C.C. Collings & Co., Inc. v. Commonwealth, 488 A.2d 1187 (Commonwealth Ct. Pa. 1984), aff'd per curiam sub. nom. Commonwealth Securities and Investments, Inc. v. Commonwealth, 514 A.2d 1373 (Pa. 1986).

The third Pennsylvania case, Dale National Bank v. Commissioner, 465 A.2d 965 (Pa. 1983), is a straight-forward application of American Bank and Trust Co. v. Dallas County, 463 U.S. 855 (1983). Dale held that the Pennsylvania bank share tax was not a franchise tax exempted by § 742. Id. at 968. But the

Pennsylvania bank share tax - like the Dallas tax at issue in American Bank - had none of the characteristics, mentioned above, of the Massachusetts tax on domestic insurance companies at issue in this case. For this reason, Dale National Bank does not conflict with the decision below and does not support certiorari.

In sum, the "conflict" of lower court decisions alleged by Liberty is illusory. There is no current conflict of decisions and no reason to anticipate the development of a conflict among the state courts. At most, the cases reveal predictable differences in result where a statutory standard is applied to differ-

ent state taxes and factual circumstances. These differences do not support plenary review in this case.[2/]

III. THE CONTRACT CLAUSE QUESTION DOES NOT MERIT REVIEW BY THE COURT.

Liberty also seeks review of the question "whether the Contracts Clause permits a state Commissioner of Revenue to administer state statutes so as to tax bonds issued by independent state authorities, even though the state

---

2/ Finally, if there is any ambiguity in § 742, that ambiguity is better resolved through legislative action than by plenary review in this Court. Clarification by Congress could include assessment of all relevant legislative concerns, including current federal and state revenues. See Pet. 5-6, 20. The Court's decision, by contrast, would be limited to an application of the 1959 amendment to § 742 to the specific terms of the Massachusetts tax on domestic insurance companies.

Legislature and the Commissioner of Revenue's predecessor have declared those bonds to be exempt." Pet. i.

Whether or not review is granted on Question No. 1, the Court should deny review of Question No. 2, because (1) the decision of the court below rests on an independent and adequate state law ground, and (2) even if Question No. 2 presents a reviewable federal question, Liberty has not shown that the question is of such general importance as to merit plenary review.

Liberty argues that this case "presents an important issue of the impairment of contracts, because the Massachusetts Commissioner of Revenue attempted to tax [certain bonds] which the Legislature and state tax commission have declared to be exempt." Pet. 20-21.

The court below determined, however, as a matter of state law, that the "exemption" from tax contained in the relevant enabling acts did not prohibit the inclusion of the interest on the state bonds in the measure of an excise tax on the bondholder. Pet. App. A8-A9.

Thus the court held that "§ 22A requires taxpayers to include in their excise tax base" the interest on the state obligations held by Liberty. Id. at A8.

The court conceded that the enabling acts of the state authorities "exempt State bonds issued by those authorities from taxation on income or property." Id. The court held, however, that the state obligations "are not exempt from forming part of the base on which an

excise tax is levied on the privilege of doing business in Massachusetts." Id. at A9 (citation omitted). Accordingly, the court held that since the tax on Liberty's franchise impaired no legislative "covenant" with Liberty to be free from taxation, there was no merit to Liberty's Contracts Clause claim. Id.

This Court lacks jurisdiction to review a state court judgment that rests on an "independent and adequate" state law ground. See Michigan v. Long, 463 U.S. 1032 (1983). Although this Court on some occasions has reviewed state court judgments and interpreted state law in deciding Contract Clause claims, (see State of Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 100 (1938)), this Court has also deferred in such cases to

the state court's construction of state law, and has held that reversal would be proper only if the state decision were "manifestly wrong," and only if the relevant statute "could not have expressed the meaning thus attributed to it" by the state court. Atlantic Coast Line R.R. v. Phillips, 332 U.S. 168, 171 (1947).

Since the decision below reasonably interpreted the state enabling acts, there is no doubt as to the adequacy of the state law ground for the judgment below on Liberty's Contracts Clause claim. Furthermore, in the circumstances, the Court should also determine that there is sufficient "independence" to the state law ground to foreclose review under 28 U.S.C. § 1257.

Finally, even if Question No. 2 presented an issue within the jurisdiction of the Court, the question would not merit review by certiorari. Liberty claims that other state courts have decided similar questions concerning a state statutory exemption of state bonds from franchise taxation, and, therefore, "the second issue raised by this Petition has immediate significance for many states in addition to Massachusetts." Pet. 21 and n. 11. Liberty makes no claim, however, that the lower courts have reached inconsistent results on these questions of state law. Nor does Liberty claim a split of opinion in the lower courts on similar Contracts Clause claims. Indeed, most of the cases cited by Liberty in support of review of

Question No. 2 do not even raise Contract Clause questions.

In sum, there is no reason for plenary review of Liberty's Question No. 2 at this time.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES M. SHANNON
ATTORNEY GENERAL
COMMONWEALTH OF
MASSACHUSETTS

Thomas A. Barnico
Assistant Attorney General
Counsel of Record
One Ashburton Place
Boston, MA 02108
(617) 727-2200, ext. 2086

Dated: November 9, 1989